

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON24 HOUR FITNESS USA, INC. A
California corp. dba 24 HOUR
FITNESS,

Petitioner,

vs.

JAMES PAYNE,

Respondent.

NO. CV-11-0474-LRS

ORDER OF DISMISSAL

The Court has previously ordered the petitioner 24 Hour Fitness USA, Inc. (“24 Hour”) to show that it properly served respondent Roby; and to show cause why this Court should not dismiss this action under the “first to file” rule and under the principles of comity and sound judicial administration that are of concern in the eight nearly identical cases filed in this district. More specifically, the Court was requesting petitioner show why this case should not be dismissed as duplicative of an earlier petition filed by respondent in the United States Court for the Northern District of California. Principles of comity and sound judicial administration counsel a court to decline jurisdiction over an action when a case involving the same parties and issues has previously been filed in another district. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir.1982). This Court also has had serious concerns, from the inception of the case, that 24 Hour was employing an insufficient method of service on the respondent.

The Court has reviewed the timely filed response to the Order to Show Cause and

the “Special Master’s Report and Recommendations” filed on May 7, 2012 in the Northern District of California, which report was attached to petitioner’s response to the show cause order. The Special Master filed a Report making recommendations on a variety of matters, all of which centered on the parties' dispute over where arbitration must occur. ECF No. 508 in Case No. 06-715 SC ("Report"). The Special Master recommended that arbitration of all claims proceed within the Northern District of California. Id. at 31-32. 24 Hour timely objected to the Special Master's Report (ECF No. 520 in Case No. 06-715 SC). The Honorable Judge Conti of the Northern District of California, however, adopted the Report with some modifications. (ECF No. 528 in Case No. 06-715 SC) .

Of significance, Judge Conti granted Plaintiff Gabe Beauperthy's request for injunctive relief under the first-to-file rule and enjoined 24 Hour from further prosecuting or filing any out-of-district Petitions to Compel Arbitration against any of the 983 individuals who presented demands for arbitration before JAMS in San Francisco. Judge Conti further ordered 24 Hour to file a copy of this Order in each of the currently pending out-of-district cases within seven (7) days of the signature date of that Order. 24 Hour has filed Judge Conti's Order in the above-referenced case. In light of the foregoing, the Court hereby **DISMISSES** this action and **DENIES as MOOT** petitioner's Motion to Compel, ECF No. 1. The Clerk is directed to file this Order and **CLOSE THE FILE**.

DATED this 13th day of August, 2012.

s/Lonny R. Suko

LONNY R. SUKO
UNITED STATES DISTRICT JUDGE